



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2005

Mr. Jeffrey D. Van Niel
Staff Counsel
Harris County Community Supervision and Corrections Department
49 San Jacinto
Houston, Texas 77002

OR2005-05778

Dear Mr. Van Niel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 229166.

The Harris County Community Supervision and Corrections Department (the "department") received a request for the following information:

- any & all records of web sites visited by [the executive director of the department] from January 1, 2004 to the present . . . We are interested in internet history from the actual computer, any network/server backups, and prior reports pulled from these computers.
- any and all image files downloaded to laptop or desktop computers [the executive director] has regular access to.

You indicate that the department does not have possession of or access to the requested information, and you therefore contend the department is not required to release any information to the requestor.

A governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). However, the Public Information Act (the "Act") generally does not require a governmental body to obtain information not in its possession or create new

information in response to an open records request. See Open Records Decision Nos. 599 (1992), 534 (1989). In this case, you indicate that the Harris County District Attorney took custody of the information at issue prior to the date the department received the present request. You further indicate that the department does not have a right of access to the information. See Gov't Code § 552.002 ("Public information" subject to disclosure under Act includes information collected, assembled, or maintained by governmental body, or to which governmental body has right of access). Thus, based on your representations that the department does not possess any responsive information and does not have a right of access to any responsive information that may be in the hands of the district attorney, we conclude the department need not release any information to the requestor at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'DS', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 229166

c: Mr. Ted Oberg
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